IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

F.A.O. No. 68 of 2004

Date of decision: 26.10.2007

Oriental Insurance Company ..Appellant

Versus

Bimla Devi and others ..Respondents

Coram

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: Mr. Ashwani Sharma, Advocate

For Respondent No. 1 : Mr. Vijay Chaudhary, Advocate

For Respondent No.2 : Mr. Anand Sharma, Advocate

Deepak Gupta, J. (Oral)

This appeal by the Insurance Company is directed against the order of the Commissioner under the Workmen's Compensation Act, Amb (for short the Commissioner), District Una, H.P. in case No. 1/WCC/2002, decided on 24.12.2002 whereby he has awarded a sum of Rs. 1,95,000/- in favour of the respondents and held the Insurance Company liable to pay the same alongwith interest @ 12% per annum

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment?***

appeal has been admitted on the following questions of law :-

1. Whether the impugned order awarding the amount of compensation to the claimant against the provisions of Workmen's Compensation Act in a time barred claim petition is sustainable in the eyes of law ?
2. Whether impugned order awarding compensation to the claimant under Workmen's Compensation Act when the cause of death is due to drowning in the river which in no manner is connected with his employment, is justified ?
3. Whether the impugned non-speaking order passed by learned Commissioner without giving any reasons and basis, is sustainable in the eyes of law especially when while carrying out the trial of the claim petition, neither any issues were framed nor the evidences were recorded ?
4. Whether the amount of compensation awarded to the claimant on basis of monthly wages @ Rs. 1,867/- per month is justified when the wages of the deceased as per statement furnished by employer at the time of purchasing the policy was shown to be Rs. 900/- only ?

I am not going into all the questions of law raised in the appeal since, in my opinion, the learned Commissioner has acted in a manner totally unbecoming of an officer exercising judicial functions and his order is liable to be set aside on the ground that he has not given

adequate opportunity to the appellant-Insurance Company to put forth its case.

The brief facts of the case are that the claimant who is the mother of deceased Rattan Chand Uppal, filed a petition on 23.9.2000 before the Commissioner, Workmen's Compensation, Amb. In this petition it was alleged that her son, Rattan Chand Uppal was employed with respondent M/s Shivambu International. It was further alleged that on 21st September, 2005 the deceased had gone to Haridwar to perform his duties and while crossing the river Ganga he had drowned and died on the spot. On this basis compensation was claimed. The alleged employer did not file any reply to the petition. The Insurance Company filed a reply in which various objections were taken including the objection that the Commissioner had no territorial jurisdiction to decide the application; that the petition was highly belated; that the deceased was not an employee of the alleged employer and that the deceased had not died due to an accident arising out of or occurring during the course of employment. It was further stated that no particulars of the nature of employment and the pay and allowances of the deceased had been given.

From the perusal of the zimni orders, it appears that the Commissioner followed a novel procedure while deciding the present matter. Instead of asking the respondents to file reply, he first asked the petitioner to supply documents to the respondents. Thereafter the matter was kept for compromise and when compromise did take place, he decided the matter. The Commissioner did not frame any issues nor did he allow the parties to lead any evidence. Only on the pleadings of the petitioner, he allowed the petition. In fact from the zimni orders I find that no opportunity whatsoever was given to the respondents to file reply to the petition.

This was a novel procedure which again highlights the necessity of giving proper judicial training to the bureaucrats who are expected to discharge judicial or quasi judicial functions. It is apparent in this case that the Commissioner totally forgot what was the procedure to be followed by him. He was either totally ignorant of the requirements of law or for reasons best known to him chose to ignore the legal position of law whereby he was expected to ask the parties to file reply and if any issues arose from the replies, to frame issues and then permit the parties to lead evidence.

In the present case even though the Insurance Company was not asked to file reply, it had filed reply. It had raised various contentions. The contentions may be right or wrong, but these could not have been decided without giving the Insurance Company adequate opportunity to prove its case. Cases, like the present one, create a grave suspicious in the mind of the court as to what were the extraneous reasons for the Commissioner to have followed such a unique procedure in deciding this particular case.

It is apparent from what has been recorded in the impugned order that the employer was supporting the claimant. The counsel for employer has virtually admitted the case of the claimant without even filing the reply. Obviously, this was being done since the liability to pay compensation would have finally fallen upon the Insurance Company. The Insurance Company had a right to ask the employer to produce the records to show that the deceased was in fact its employee. The employer must have been maintaining the records with regard to the salaries being paid to its employees. Without production of such records, how could the Insurance company be held responsible to pay the compensation

just on mere asking of the claimant. The procedure followed by the Commissioner is against all tenets of natural justice.

Important contentions had been raised by the Insurance Company. In the petition it is not even stated in what capacity the deceased was employed with M/s Shivambhu International. What were the nature of his duties? Even if the deceased was employed why had he been sent to Haridwar ? Was he on duty or not ? Why was he crossing the river Ganga ? Was he swimming or on a vehicle ? How did he drown ? Was his death in any way connected with his employment ? All these questions required answers which the Commissioner for reasons best known to him, has avoided to give while making his award in the present case.

In view of the above discussion, the impugned order dated 24.12.2002, passed by the Commissioner in Case No. 1/WCC/2002, is totally arbitrary and illegal and is, therefore, set aside. The matter is remanded back to the Commissioner who shall give an opportunity to the owner also to file reply to the petition. After the replies are filed, the Commissioner shall frame issues and give reasonable opportunity to all the parties to lead evidence

and shall decide the matter strictly in accordance with the evidence led before him. The parties are directed to appear before the Workmen's Compensation Commissioner, Amb on 17th December, 2007. The Registry is directed to ensure that the record of the Commissioner is sent to him well before the said date.

A copy of this judgment be sent to the Chief Secretary to the Government of Himachal Pradesh who shall ensure that the same is placed on the service record of the concerned officer and appropriate action is taken against him.

October 26, 2007(K) (Deepak Gupta), J.